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Cce Vs. A.C.C. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-08-2004

Reported in : (2005)(99)ECC611

Judge : S Kang, Vice, A T V.K.

Appellant : Cce

Respondent : A.C.C. Ltd.

Judgement :

1. Revenue filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals) whereby benefit of Modvat credit was allowed in respect of the parts of power plant as capital goods.

2. The brief facts of the case are that the respondents are engaged in the manufacture of cement and they set up power plant in their cement plant to generate and captively consume the electricity in the manufacture of cement. The respondent availed credit in respect of the parts of the power plant. The revenue wants to deny the benefit of Modvat credit in respect of the parts which are used in setting up the power plant on the ground that the power plant is set up for the manufacture of electricity which is an intermediate product and the electricity is not specified goods covered under the definition of capital goods under Rule 57Q of Central Excise Rules, therefore, as per the provision of Rule 57-R of Central Excise Rules, the parts are not entitled for credit as capital goods. The other contention of the Revenue is that electricity is exempted from payment of duty,

therefore, the benefit of capital goods is not avbailable which are used in the manufacture of exempted goods.

3. The contention of respondent is that parts are used for setting up the power plant. The power plant is used for manufacture of electricity which is used in relation to the manufacture of final product which is dutiable. The respondent relied upon the decision of the Tribunal in the case of Grasim Industries Ltd. v. CCE, Indore, 2004 (164) ELT 348 and in the case of CCE, Raipur v. Jindal Steel & Power Plant, 2003 (90) ECC 658 (T) : 2003 (158) ELT 178 to submit that in above-mentioned cases, the Tribunal allowed the benefit of Modvat credit in respect of parts of power plant.

4. We find that the Tribunal in above-mentioned cases held that credit in respect of parts of power plant which are used for assembling the power plant and the power plant is used for generation of electricity which is used in producing or processing final dutiable product is admissible. In view of the above decisions of the Tribunal, we find no infirmity in the impugned order. The appeal is dismissed.

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